

The Orissa



Gazette

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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 17th October 2011

No. 9254—II/1-(B)-66/2003-L.E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 20th June 2011 in I. D. Case No. 70 of 2003 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of M/s. Radiant Telesystems Ltd., Bhubaneswar and its workman Shri Ramesh Chandra Parida was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

**IN THE LABOUR COURT, BHUBANESWAR
INDUSTRIAL DISPUTE CASE No. 70 of 2003**

The 20th June 2011

Present :

Shri S. K. Dash,
Presiding Officer,
Labour Court, Bhubaneswar.

Between :

- | | |
|--|---------------------------|
| 1. The Management of M/s. Radiant Telesystems Ltd., Bhubaneswar. | .. First-party Management |
| 2. The Managing Director, M/s. O. S. F. C. Ltd., O. M. P. Square, Cuttack-753 003. | |

And

Their Workman	.. Second-party Workman
Shri Ramesh Chandra Parida.	

Appearances :

Shri A. K. Das	.. For Management No. 1
Shri N. K. Senapati	.. For Management No. 2
Shri R. C. Parida	.. Workman, himself.

AWARD

The Government of Orissa in exercise of powers conferred by sub-section (5) of Section 12, read with Clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 have referred the matter in dispute to this Court vide Order No. 11423—li/1(B)-66/2003-LE., dated the 27th November 2003 of the Labour & Employment Department, Bhubaneswar for adjudication.

2. The terms of reference is as follows :

"Whether the action of the management of M/s. Radiant Telesystems Ltd., Mancheswar Industrial Estate, Bhubaneswar in refusing employment to Shri Ramesh Chandra Parida, Jr. Technician with effect from the 11th February 2002 is legal and/or justified ? If not, what relief is Shri Parida entitled to ?"

3. The case of the workman in brief is that initially he joined under the management of M/s. Radiant Electronics Ltd. on the 24th December 1991 which was subsequently renamed as M/s. Radiant Telesystems Ltd. From the date of joining he became an insured person under the Employees State Insurance Scheme and paid contribution accordingly. Thereafter he joined as a General Trainee on the 9th November 1994 and performed the duties of Technician. Subsequently his service was regularised with effect from the 1st April 1995 as Junior Technician. On the 25th January 2002 he has submitted an application for leave for 2 days i. e. for the 28th January 2002 and 29th January 2002 and resumed his duty on the 30th January 2002 at 10.40 A. M. But his leave was not sanctioned and wages for $1\frac{1}{2}$ days were deducted unjustly. From the office he came to know that because of non-submission of leave application his wage deducted. He went to meet the Managing Director on this point, but he was found absent. On the 8th February 2002 and 9th February 2002 he was not allowed to enter into the factory premises by the gatekeeper. As per telephonic message of Managing Director, on the 11th February 2002 he went to meet with him and put forth his grievances. He was allowed to resume his duty on the 11th February 2002. He was advised to file another application on the 12th February 2002 and he worked up to the 18th February 2002 till 11.15 A. M. But his full wages was not paid till the 18th February 2002. He met the Managing Director in this regard but he gave him blows and drove out of the gate. On the next day on the 19th February 2002 when he went to join in his duty, the gatekeeper told him that the Managing Director has closed the gate for him forever. Thereafter he made representations to the Managing Director, but it was in vain. So he raised an industrial dispute before the labour authority and when the conciliation failed the matter was informed to the Government and this reference has been received and this I. D. Case has been initiated wherein the workman has prayed for his reinstatement in service with full back wages. Initially, the reference has been received against the management of M/s. Radiant Telesystems Ltd., Bhubaneswar and subsequently M/s. Odisha State Financial Corporation through its Managing Director, O. M. P. Square, Cuttack has been impleaded as a party being Management No. 2.

4. The Management No. 1 appeared and filed written statement partly admitting and partly denying the plea of the workman. According to it, all the assets and machinery of the Company have been seized by the Management No. 2 on the 17th February 2004 and from that date there

was no income of the Company and the Company only exists in pen and paper. The Management No. 1 retrenched the workman from the job with effect from the 15th May 2002 after several notices and letters to him to which he never responded. The workman was a habitual indisciplined worker and created a lot of problems prior to his termination. He was also a habitual leave taker without prior sanction/intimation. He was absent from duty from the 19th February 2002 till date of his termination by the Management No. 1. The management had afforded enough opportunities to the workman to join but it was in vain. The management finding no other alternative terminated the service of the workman with effect from the 15th May 2002 assuming that he is no more interested to continue in his employment. So in this background the workman is not entitled to get any relief from this management.

5. The Management No. 2 appeared and filed written statement challenging the plea of the workman. According to it, Odisha State Financial Corporation (in short O. S. F. C.) and Industrial Promotion and Investment Corporation Ltd. (in short IPICOL) had jointly financed and advance loan in favour of the Management No. 1 for acquisition of land and building, plant and machinery and furniture and fixture for the purpose of installation of the industry, out of which the Management No. 1 had availed term loan of Rs. 28,40,939.53 and short term working capital loan of Rs. 40,00,000 as on dated the 13th November 1997 from the management No. 2 i. e. O. S. F. C. Due to non-payment of the loan by the Management No. 1, the O. S. F. C. seized the unit of the Management No. 1 and taken over the available assets of the Unit on the 17th February 2004 under Section 29 of the O. S. F. C. Act, 1951 for the purpose of the realisation of the outstanding loan dues. But the seized assets of the Unit of the management could not be sold in auction due to restrictions imposed by the Government. The O. S. F. C. is not aware of the fact whether the abovenamed person was the workman under the Management No. 1 or that his service was terminated illegally by the management No. 1 with effect from the 15th May 2002 as alleged. The O. S. F. C. was not the employer of the workman in strict sense, as the O. S. F. C. has only seized/taken over the assets of the industrial concern. It is never taken over its official documents, registers or records and the same are still existing/functioning. So the O. S. F. C. can neither be sued as the owner of the Management No. 1 nor liable for any claim made by the workman. The reference is not maintainable for non-joinder of parties since IPICOL has also financed jointly in favour of the Management No. 1 who is also a necessary party to this dispute. So in this background the Management No. 2 has prayed that the workman is not entitled to get any relief from the O. S. F. C. i. e. Management No. 2.

6. In view of the above pleadings of the parties, the following issues are settled :—

ISSUES

- (i) "Whether the action of the management of M/s. Radiant Telesystems Ltd., Mancheswar Industrial Estate, Bhubaneswar in refusing employment to Shri Ramesh Chandra Parida, Junior Technician with effect from the 11th February 2002 is legal and/or justified ?
- (ii) If not, what relief is Shri Parida entitled to ?"

7. In order to substantiate his plea the workman has examined two witnesses altogether out of whom W. W. 1 is the workman himself whereas W. W. 2 is a co-worker of the workman. Similarly the Management No. 2 has examined his Manager, Law as M. W. 1 and the Management No. 1 has examined his Manager (F) as M. W. 2. The workman has proved the documents marked as Exts. 1 to 11. Similarly the Management No. 1 has proved the documents marked as Exts. A to L whereas the Management No. 2 has not proved any document on his behalf.

FINDINGS

8. *Issue Nos. (i) and (ii)*—Both the issues are taken up together for discussion for convenience.

According to W. W. 1 initially he joined under the management of Radiant Electronics Ltd. on daily wage basis with effect from the 24th December 1991 and subsequently the name of the management has been changed to M/s. Radiant Telesystems Ltd. who is the present Management No. 1. As per appointment letter vide Ext. 2/Ext. D, the workman joined in his duty under the Management No. 1 as General Trainee being a junior Technician. Ext. E, the xerox copy of joining report discloses about the joining of the workman in duty on the 9th November 1994. According to M. W. 2, the workman was working under the Management No. 1 from the 8th November 1994 to 13th May 2002. But in Para. 9 of his affidavit evidence it has been stated that without prior approval or intimation the workman was on leave from the 19th February 2002 to 15th May 2002. However there is no material on record to come to the conclusion that M/s. Radiant Electronics Ltd. was subsequently renamed as M/s. Radiant Telesystems Ltd. with effect from the 9th November 1994. The Management No. 1 had illegally deducted the wages for $1\frac{1}{2}$ days from his monthly wages for the month of January, 2002 and when he protested, he was restrained entry to the factory premises with effect from the 9th February 2002. Thereafter, after discussion with the Managing Director of the management No. 1 he was allowed to perform the duty with effect from the 12th February 2002 to 18th February 2002. But his wages for the month of January 2002 was not paid. Ext. A is the xerox copy of payment sheet which discloses about non-payment of salary to the workman for the month of January 2002. Ext A/1 also discloses that the salary of the month of February 2002 was not paid to the workman. Thereafter from March 2002 to May 2002 his salary was calculated "Zero" vide Exts. A/2 to A/4. The workman was restrained entry to the factory premises by the gate-keeper with effect from the 19th February 2002 as per the instruction of the Managing Director of the management No. 1. W. W. 1 also deposes that his last salary was Rs. 2,337 per month. Ext. 10, the xerox copy of the pay slip for the month of May, 2001 discloses to be the same. But in Ext. A the gross salary of the workman for the month of January, 2002 discloses to be Rs. 2,195 per month.

9. It is admitted by M. W. 2 the workman to be its workman and he was working as Junior Technician. He was a habitual leave taker without prior sanction/intimation/approval of the concerned authority. He has taken leave for two days i. e. on the 28th January 2002 and 29th January 2002 without prior intimation/approval of the authority. However it was adjusted against his leave credit. The workman was a very irregular in his attendance, so all the leave credits in his account was completed and $1\frac{1}{2}$ day salary was deducted for this month for late attendance. Once again the workman sent on leave without any prior approval/intimation from the 19th February 2002. The management issued show cause notice on the 26th February 2002 for his irregular attendance and unauthorised leave which was not intentionally received by the workman and it was returned back. Perused the documents marked as exhibits on behalf of both the sides.

10. Exts. H, J and K are the xerox copies of notices issued to the workman of dated the 4th January 2002, 26th February 2002 and 20th April 2002 respectively regarding his unauthorised absence. But nothing has been proved to show that such notices were duly served on the workman. Postal cover regarding return of any notice from the workman has not been filed in support of the evidence of M. W. 2 as mentioned above. In the cross-examination this witness has clearly admitted that he has not filed any paper to show that any show cause or warning was issued to the workman for his indisciplined activities. Ext. L is the xerox copy of termination letter which shows that due to unauthorised absence from duty since the 19th February 2002 the management has decided on

the facts available with him that the service of the workman is hereby terminated with effect from the 15th May 2002. But nothing has been proved by the Management No. 1 to show that such termination letter was duly served on the workman. As per Ext. 4 the workman has submitted his grievance regarding illegal refusal of employment to the Management No. 1 under a copy to the concerned District Labour Officer of dated the 12th April 2002 by registered post with A. D. and A. D. form discloses that it was received by the Management No. 1 on 15th April 2002. Ext. 5 is the complaint petition of the workman to the concerned District Labour Officer of dated the 5th June 2002 wherein he has also complained about refusal of employment with effect from the 19th February 2002. The failure report of the District Labour Officer also discloses that the complaint petition of the workman dated the 5th June 2002 was received by him. Ext. 6 is the xerox copy of reply of the Management No. 1 to the concerned District Labour Officer wherein the Management No. 1 has taken the plea that the workman was absent without application/information from the 19th February 2002 and subsequently enough opportunities were given to him to join in his duty. He was served two notices for this but the workman neither replied to the notices nor came to the office. The management has no other alternative than to terminate the service of the workman with effect from the 15th May 2002 assuming that he is not willing to join under the Management No. 1. But as mentioned earlier nothing has been proved by the Management No. 1 that any such notice was served on the workman.

11. According to the settled principle of law as reported in 2010-IV-LLJ-795 (Del.) the abandonment of service cannot be readily inferred. Abandonment of service is a question of intention which can be gathered from the totality of the facts and circumstances of each case. In case of any cogent and convincing evidence voluntarily abandonment on the part of the employee cannot be readily inferred. Similarly in the authority reported in 2004 LLR 722 that termination of service of a workman due to unauthorised absence, without conducting of enquiry, will be illegal and violative of principles of natural justice. In view of the authority reported in 2001 LLR 54 it has been held that even when a workman fails to report for duty, the management cannot presume that the workman has left the job despite being called upon to report failing which his name will be removed from the rolls. Even when the workman remained absent failed to report for duty, it was imperative to follow the principles of natural justice by giving the opportunity. In the authority as reported in 2011 LLR 312 it has been held that while drawing the presumption that the workman has abandoned the job of his own accord, holding of enquiry is imperative. In the authority reported in 1993 (67) F. L. R. 111 it has been held that in case of absence from duty without any enquiry and opportunity of hearing the principle of natural justice violated. In the authority reported in 1993 LLR 876 it has been held that the termination on the ground of absence without holding enquiry or serving any charge-sheet, violation of principles of natural justice and holding of enquiry is imperative. In the instant case, admittedly no enquiry was held against the workman for his absence from duty. This fact has also been admitted by the M. W. 2 in his cross-examination.

12. In the authority reported in 1996 LLR 59 it has been held that the absence simpliciter by itself cannot be equated with abandonment of the service as the termination of services of the workman amounted to retrenchment the employer was under a legal obligation to follow the procedure prescribed under Section 25-F of the Industrial Disputes Act and admittedly under Section 25-F of the Industrial Disputes Act has not been followed in the instant case. The M. W. 2 in his evidence has also admitted that Section 25-F of the Industrial Disputes Act has not been complied with as the workman refused to accept the same. But nowhere it is proved by the Management No. 1 that the workman has refused to receive the benefits under Section 25-F of the Industrial Disputes Act.

13. In the instant case the reference has been received regarding refusal of employment with effect from the 11th February 2002 but from the materials on record as discussed above it shows that it was from the 19th February 2002. According to the authority reported in AIR 1963 SC 569 it has been held that an order of reference hastily drawn or drawn in a casual manner often gives rise to unnecessary disputes and thereby prolongs the life of the dispute and the Court must attempt to constitute the reference not too technically or in a pedantic manner, but fairly and reasonably construed in this manner and having regard to the content of the dispute covered. In the instant case, the dispute clearly shows that the refusal of employment of the workman was with effect from the 19th February 2002 and not from the 11th February 2002 and also not from the 15th May 2002 as pleaded by the Management No. 1.

14. The Management No. 2 while deposing in the Court as M.W. 1 has taken the plea that the O. S. F. C. was not the employer of the workman in strict sense and the O. S. F. C. has only seized/taken over the assets of the industrial concern mortgaged/hypothecated to it by the Management No. 1 where upon O. S. F. C. has got first charge in respect of its claims/loan dues, but the borrower Company is a separate entity and the management of which has neither been taken over nor its official documents, registers or records by O. S. F. C. and the same is still existing/functioning. Therefore, the O. S. F. C. can neither be sued as the owner of the Management No. 1 nor liable for any claim made by the workman. Initially the reference has been received against the management No. 1 and subsequently on the prayer of the workman, the O. S. F. C. was made a party as Management No. 2. The O. S. F. C. seized the industrial concern and taken over the available assets of the unit of the management No. 1 on 17th February 2002 which is much after institution of the case under Section 29 of O. S. F. C. Act, 1951. Ext. B is the supporting document of it. According to the authority reported in 1988-AIR (SC)-O-215 it has been held that in every case of transfer, devolution, merger, take over or a scheme of amalgamation under which the right and liabilities of one company or corporation stand transferred to or devolve upon another company or corporation either under a private treaty or a judicial order or under a law, the transferee company or corporation as a successor-in-interest becomes subject to all the liabilities of the transferor company or corporation. But such principle is not applicable to the present Management No. 2 and he is not liable in any way in this case as the dispute is between the workman and his employer i. e. Management No. 1. Now on careful consideration of all the materials on record as discussed above, I came to the finding that the action of the Management No. 1 in refusing employment to the workman with effect from the 19th February 2002 and not from the 11th February 2002 is neither legal nor justified.

15. Regarding reinstatement and full back wages, it is now well settled by reasons of catena of decisions of the Hon'ble Supreme Court that the relief of reinstatement with full back wages would not be granted automatically only because it would be lawful to do so. For the said purpose several factors are required to be taken into consideration. In the instant case, basing on the facts and materials available, I am of the opinion that it is not a fit case to reinstate the workman in service. He is only entitled to get a lump sum amount as compensation in lieu of reinstatement in service with full back wages. Taking into consideration of all the materials available in the case record I am of the opinion that a lump sum amount of Rs. 1, 50,000 as compensation in lieu of reinstatement and full back wages will meet the ends of justice in this case. Hence, both the issues are answered accordingly.

16. Hence, Ordered :

That the action of the management of M/s. Radiant Telesystems Ltd., Mancheswar Industrial Estate, Bhubaneswar in refusing employment to Shri Ramesh Chandra Parida, Junior Technician with effect from the 19th February 2002 and not from the 11th February 2002 is eillegal and unjustified. The workman Shri Parida is entitled to get a lump sum amount of Rs. 1,50,000 (Rupees one lakh fifty thousand) only as compensation in lieu of reinstatement and back wages. Only M/s. Radiant Telesystems Ltd., Bhubaneswar i. e. Management No. 1 is directed to implement this Award within a period of one month from the date of its publication failing which the amount shall carry interest at the rate of 9% (nine per cent) per annum till its realisation.

The reference is answered accordingly.

Dictated and corrected by me.

S. K. DASH
20-6-2011
Presiding Officer
Labour Court, Bhubaneswar

S. K. DASH
20-6-2011
Presiding Officer
Labour Court, Bhubaneswar

By order of the Governor

T. K. PANDA
Under-Secretary to Government